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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ANDREW M., a Person Coming Under  
the Juvenile Court Law.

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LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROBERT M.,

Appellant and Defendant.

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B208640

(Los Angeles County  
Super. Ct. No. CK70103)

APPEAL from orders of the Superior Court of Los Angeles County,  
Valerie Skeba, Referee. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County  
Counsel and Jacklyn K. Louie, Deputy County Counsel for Plaintiff and Respondent.

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## INTRODUCTION

This is a juvenile dependency case. The juvenile court asserted jurisdiction over a 13-year-old boy after finding, *inter alia*, that the boy's father physically and sexually abused him. The court further ordered that physical custody of the boy be taken from the father. The father appeals from the jurisdictional and dispositional orders. We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

#### 1. *Facts*

Andrew M. was born in November 1994. He is the son of appellant Robert M. (father) and Donna G. (mother). In April 2007, father filed a petition for dissolution of marriage against mother. At that time, and at all relevant times thereafter, father resided in Las Vegas, Nevada, and mother resided in Los Angeles, California. On September 17, 2007, the family law court awarded father sole custody of Andrew.

Andrew began living with father in approximately March 2007. While there, Andrew witnessed his father smoking marijuana and "crystal looking stuff."<sup>2</sup> Father was frequently "high" on illicit drugs and once offered Andrew marijuana. In response to Andrew's minor infractions of father's rules or code of conduct (e.g. leaving a towel on the bathroom floor), father frequently beat Andrew's buttocks and legs with a hanger or belt, leaving welts and bruises.

In September 2007, father sexually abused Andrew on two occasions. The two incidents occurred in very similar ways. Father had Andrew drink several apple "martinis," causing the boy to feel "woozy." Father then took off Andrews clothes and, over Andrew's objections, sodomized Andrew by inserting his penis into Andrew's anus.

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<sup>1</sup> We summarize the facts in the record by presenting them in a light most favorable to the juvenile court's jurisdictional and dispositional orders. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.)

<sup>2</sup> Father has been convicted of many crimes, including burglary, forgery, making and passing a fictitious check, possession of a controlled substance for sale, contributing to the delinquency of a minor, possession of a driver's license with intent to commit forgery, and grand theft.

Father told Andrew if he informed anyone about these incidents, he would harm Andrew and the rest of his family.

About a week after the second incident of sexual abuse, Andrew ran away from father while he and father were visiting Los Angeles County. Andrew fled from father because he was “scared” that father would sexually abuse him again. Shortly after running away, Andrew was interviewed and detained by the Los Angeles County Department of Children and Family Services (Department).

## *2. Procedural History*

On September 26, 2007, the Department filed a juvenile dependency petition. In the petition, the Department alleged that Andrew was a child within the meaning of Welfare and Institutions Code section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (d) (sexual abuse), as a result of father’s misconduct.<sup>3</sup> On that same date, the juvenile court held an initial hearing pursuant to section 319. The court found at that hearing that the Department made a prima facie case for detaining Andrew and, on that basis, ordered that Andrew be temporarily removed from father’s custody pending a full jurisdictional hearing. Andrew was released in mother’s care.

After an unsuccessful attempt to mediate the matter, and two additional hearings, the juvenile court scheduled a hearing on January 15, 2008, to adjudicate the Department’s petition. On January 15, 2008, the court began a contested hearing on the merits. Andrew was called into the referee’s chambers and began testifying. However, the court continued the matter because the monitor in the courtroom was not working.

On February 26, 2008, the court declared a mistrial and scheduled a trial setting conference on March 4, 2008. On March 4, 2008, the court scheduled a trial on April 24, 2008. However, on April 24, 2008, at father’s request, the matter was continued to May 12, 2008. Prior to granting the continuance, the juvenile court advised the parties: “[I]f for some reason you’re not going to be able to proceed on that day, please let everybody know so that we don’t bring in the child unnecessarily.”

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<sup>3</sup> All subsequent section references are to the Welfare and Institutions Code.

After an additional continuance, the contested hearing finally began on May 19, 2008. At the beginning of the hearing, father's counsel asked for a continuance until June 4, 2008, on the ground that father was not present because he was "confined to a rehabilitation center."<sup>4</sup> The juvenile court, however, denied the request. The court explained its decision in the following manner: "This [petition] was filed in September [2007], and it's been put over multiple times. It's not fair to Andrew to have this case continued just because your client is in a residential program. And it was continued several times at his request. So, no, I'm not going to continue it. It was his choice not to be here today."

At the hearing, Andrew testified in the referee's chambers regarding father's physical and sexual abuse, and drug use. Father's lawyer extensively cross-examined Andrew. At the end of the hearing, over father's objection, the juvenile court stated that it would not hear closing argument. The juvenile court stated that it did not believe that argument would be "helpful," and that it found Andrew "very credible."

The juvenile court sustained the Department's petition with respect to the section 300, subdivision (a) and subdivision (d) allegations, and with respect to four of the five alleged counts of violations of section 300, subdivision (b). Pursuant to section 361, the court also removed Andrew from father's physical custody. In reaching this decision, the court found, by clear and convincing evidence, that substantial danger existed to Andrew's physical and emotional health and safety, and that there were no reasonable means to protect the child without removing him from father's custody. This appeal followed.

## **CONTENTIONS**

Father contends that the juvenile court's refusal continue the May 19, 2008, hearing was an abuse of discretion. He further contends that the juvenile court's refusal to allow his counsel to present closing argument was a violation of his due process rights.

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<sup>4</sup> Father does not contend that he was *involuntarily* "confined" to a rehabilitation center, and there is no evidence in the record indicating that he was required to stay there by court order.

Finally, father argues that there was not substantial evidence to support the court's jurisdictional and dispositional findings on May 19, 2008.

## DISCUSSION

### 1. *The Court Did Not Abuse Its Discretion By Refusing to Continue the May 19, 2008, Hearing*

Continuances in juvenile dependency proceedings are “disfavored.” (*In re David H.* (2008) 165 Cal.App.4th 1626, 1635.) This is because the expeditious resolution of juvenile dependency proceedings is an important policy objective of the Arnold-Kennick Juvenile Court Law (the juvenile law), section 200 et seq. (See *In re Josiah Z.* (2005) 36 Cal.4th 664, 674; *In re Jesusa V.* (2004) 32 Cal.4th 588, 625.)

The juvenile court has discretion to continue hearings pursuant to section 352, which provides: “(a) Upon request of counsel for the parent, . . . the court may continue any hearing under [the juvenile law] beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, *the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.*”

“Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause. . . .

“[¶ . . . ¶]

“(b) . . . *In no event shall the court grant continuances that would cause the hearing pursuant to Section 361 to be completed more than six months after the hearing pursuant to Section 319.*” (Italics added.)

Here, the hearing pursuant to section 319 occurred on September 26, 2007, more than six months prior to the hearing on May 19, 2008. The May 19, 2008, hearing was both a hearing to adjudicate the Department's petition and a hearing pursuant to section

361 to determine limitations, if any, on father's control over Andrew during the pendency of the dependency proceedings. Thus, a continuance of the May 19, 2008, hearing was expressly prohibited by section 352, subdivision (b).

Further, the juvenile court acted well within its discretion under section 352, subdivision (a), in denying father's request for a continuance on May 19, 2008, especially in light of the policy in favor of expeditious resolution of juvenile dependency proceedings. By the May 19, 2008 hearing, the proceedings were already behind schedule as a result of a mistrial and numerous continuances, including a continuance requested by father. The juvenile court reasonably determined that it was not in Andrew's best interest to grant another continuance.

2. *The Juvenile Court Did Not Deprive Father of Due Process By Refusing to Permit Father's Counsel to Present a Closing Argument*

Father claims that he had a due process right to present a closing argument at the May 19, 2008, hearing. He has not, however, cited any authority to support his position, and we have found none.

Dependency proceedings are civil in nature. (*In re Malinda S.* (1990) 51 Cal.3d 368, 384; see also *In re A.R.* (2009) 170 Cal.App.4th 733, 743.) "Oral argument in a civil proceeding tried before the court without a jury, is a privilege, not a right, which is accorded the parties by the court in its discretion." (*Oil Workers Intl. Union v. Superior Court* (1951) 103 Cal.App.2d 512, 581; see also *Gillette v. Gillette* (1960) 180 Cal.App.2d 777, 781.)

Here, the juvenile court conducted a civil hearing without a jury on May 19, 2008. Father, however, has not met his burden of showing that the juvenile court abused its discretion in denying him a closing argument at that hearing. It is worth noting that father does not specify what he would have argued at the hearing. He does not, for example, contend that he would have argued that even if Andrew's testimony were believed, the petition was unmeritorious for some independent reason. Rather, father's sole substantive defense to the Department's allegations appears to be that Andrew was not credible. Because the juvenile court found Andrew's testimony "very credible,"

despite extensive cross-examination by father's counsel, it acted within its discretion in denying father the privilege of a closing argument.

3. *Substantial Evidence Supports the Juvenile Court's Jurisdictional and Dispositional Findings*

"In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

We do not "reweigh" the evidence. (*In re E. H.* (2003) 108 Cal.App.4th 659, 669.) We also do not consider whether there is a substantial conflict of the evidence. Rather, we must consider whether there is substantial evidence *in favor of the respondent*. (*In re Stephen W.* (1990) 221 Cal.App.3d 629, 644, fn. 12.) Where such substantial evidence is present, " 'no matter how slight it may appear in comparison with the contradictory evidence,' " the judgment must be affirmed. (*Ibid.*)

In this case, the substantial evidence standard is easily met. A Department social worker interviewed Andrew privately in September 2007 regarding Andrew's allegations against father. This interview was memorialized in a Detention Report dated September 27, 2007. In October 2007, Andrew was interviewed by a second Department social worker. The second interview was memorialized in a Jurisdiction/Disposition Report dated October 29, 2007. Both reports were admitted into evidence on May 19, 2008. Andrew's statements to the Department and his testimony before the juvenile court clearly supported each of the sustained allegations in the Department's petition, and the juvenile court's dispositional findings.

Father argues at length that Andrew's testimony lacks credibility. Andrew was motivated to fabricate his testimony, father contends, because father was a stricter disciplinarian than mother and, for that reason, Andrew wanted to live with mother. As we have noted, however, we cannot consider father's attacks on Andrew's credibility.

Father also places great emphasis on a medical exam Andrew received on September 24, 2007. The exam indicated that there was no physical evidence of sexual assault, but since it was conducted more than 148 hours after the last reported assault, the findings were "consistent" with Andrew's allegations. Father claims that "had the exam been given 147 hours after the alleged assault, the findings would not have been consistent with a finding of sexual abuse." This evidence, however, at most contradicts other evidence submitted by the Department, namely Andrew's statements and testimony. It does not support father's claim that there was a lack of substantial evidence to support the juvenile court's findings.

#### **DISPOSITION**

The juvenile court's May 19, 2008, jurisdictional and dispositional orders are affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.